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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 783

PHILLIP W. AUSTIN, *Petitioner*,

v.

THE MUNICIPAL COURT FOR THE DISTRICT OF COLUMBIA AND THE JUDGES THEREOF, *Respondents*,

BRIEF FOR RESPONDENTS IN OPPOSITION

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

STATEMENT OF QUESTION PRESENTED

In the opinion of the respondents, the question presented is:

Does not the Municipal Court for the District of Columbia have authority to provide by rule of court that, before an individual may practice at its bar as an attorney, he shall (1) take and subscribe to an oath that he is a member in good standing of the United States District Court for the District of Columbia, that he has not been suspended or disbarred by any court, that he will demean himself as an attorney and counsellor of the Municipal Court uprightly and according to law, and that he will support the rules of the Municipal Court, the laws of the District of Columbia, and the Constitution of the United States; and (2) sign the

Roll of Attorneys of the Municipal Court and pay the sum of fifty cents ($.50) to the clerk of that court?

COUNTER STATEMENT OF THE CASE

On May 5, 1955 petitioner, a member of the bar of the United States District Court for the District of Columbia, appeared before the Municipal Court for the District of Columbia purporting to represent as counsel a party to a suit on trial before that court. The court called petitioner's attention to the fact that he had not complied with the provisions of Municipal Court Rule 75, effective January 2, 1952 (App. 5-6), regarding the admission of attorneys to its bar, and stated it would give him an opportunity to comply with the rule before proceeding further in the case on trial. When petitioner stated in open court that he refused to comply with the provisions of the rule, the court, by order, prohibited and enjoined petitioner from participating in or prosecuting any action in a representative capacity in the Municipal Court until he complied with the provisions of its Rule 75 (App.7).

On May 12, 1955 petitioner filed in the United States District Court for the District of Columbia an amended complaint seeking to enjoin the Municipal Court and the judges thereof from enforcing its order of May 5, 1955 (App. 2).

After argument on a motion filed by respondents, the United States District Court, by order dated June 2, 1955 (App. 9), dismissed petitioner's complaint.

SUMMARY OF THE ARGUMENT

The matters involved in the proceedings below arose out of the enforcement of a rule of the Municipal Court for the District of Columbia of purely local application, and the United States Court of Appeals for the District of Columbia Circuit having decided that the petitioner was deprived of no substantial right, no question is now presented requiring the exercise of the jurisdiction of this Court to review on writ of certiorari.

ARGUMENT

I

This Court should not exercise jurisdiction to review the judgment of the court below because the matters involved arose out of the enforcement of a rule of the Municipal Court for the District of Columbia of purely local application.

By Act of Congress approved April 1, 1942, the Municipal Court for the District of Columbia was authorized and directed " * * * to prescribe by rules the * * * practice and procedure in such court, to provide for the efficient administration of justice * * * ." The Municipal Court was furtheir authorized, for cause, to censure, suspend, or expel any attorney practicing at its bar.[1]

In the exercise of authority thus conferred, the Municipal Court adopted as a rule of that court Rule 75 which provides in part:

> "(a) The bar of this court shall consist of any person who is a member of the bar of the United States District Court for the Distriict of Columbia in good standing, unless disbarred or suspended by action of this court, provided such person shall:
>
> "(1) Take and subscribe to the following oath or affirmation, viz:
>
> 'I, _____, do solemnly swear (or affirm) that I am a member in good standing of the United States District Court for the District of Columbia, having been duly admitted on the _____ day of _____, 19_____; that I have not been suspended or disbarred by any Court; that I will demean myself as an attorney and counsellor of this Court uprightly and according to law; and that I will support the Rules of this Court, the laws of the District of Columbia, and the Constitution of the United States.'

[1] 56 Stat. 190, 196, ch. 207, D.C. Code, 1951 Ed., §§ 11-756(b), 11-775.

"(2) Upon subscribing thereto on a card to be furnished by the clerk of this Court, sign the Roll of Attorneys of this Court and pay the sum of fifty cents ($.50) to the clerk of this Court.

* * * * * *

"(b) No person, other than such member duly qualified and admitted to practice as provided in paragraph (a), shall, without special permission of the judge presiding over the case in which such person is to appear, and then for purposes of the trial of that case only, participate in or prosecute any action in a representative capacity in this court." (App. 7)

The primary purpose of Rule 75 quoted above is to facilitate the identification of persons who, as attorneys in the Municipal Court, purpose to represent litigants in the thousands of cases presented to the judges thereof for disposition.

Such matters, relating, as they do, to the orderly and effiicient administration of justice in the District of Columbia, have been entrusted by the Congress to local courts and only when there has been a demonstration of egregious error has the Supreme Court exercised its jurisdiction to review on writ of certiorari.

Thus it has been repeatedly said by this Court that it will not ordinarily review decisions of the courts of the District of Columbia based upon or construing statutes limited in their application to, or which declare the common law of, the District of Columbia. *American Security & T. Co.* v. *District of Columbia*, 224 U. S. 491, 32 S. Ct. 553, 56 L.Ed. 856; *Del Vecchio* v. *Bowers*, 296 U. S. 280, 285, 56 S. Ct. 190, 80 L. Ed. 229; *District of Columbia* v. *Pace*, 320 U. S. 698, 702, 64 S. Ct. 406, 88 L. Ed. 408; *United Surety Company* v. *American Fruit Product Company*, 238 U. S. 140, 35 S. Ct. 828, 59 L. Ed. 408; *Fisher* v. *United States*, 328 U. S. 463, 66 S. Ct. 1318, 90 L. Ed. 1382, 166 A.L.R. 1176;

Griffith v. *United States*, 336 U.S. 704, 718, 69 S. Ct. 814 93 L. Ed. 993, rehear. den. 337 U.S. 921, 69 S. Ct. 1152, 93 L. Ed. 1730.

Since, therefore, the matters involved in the proceedings below arose out of the enforcement of a rule of the Municipal Court adopted in exercise of authority conferred by a statute of purely local application, surely this case is not of the class of cases contemplated by Rule 19 (b) of the Rules of this Court. For instance, petitioner would have no right to practice as an attorney in the United States Court of Appeals for the District of Columbia without first complying with Rule 7 of the rules of that court which provides that, before an attorney may be permitted to practice in that court, he must, among other things, furnish a certificate showing his personal and professional qualifications, make and subscribe to an oath, and pay a fee of $10.00.

And so it is with many Federal agencies, which, having no authority to admit to practice of the law, require that attorneys desiring to practice before any such agency shall enroll, make and subscribe to an ancillary oath, and pay a fee. See in this connection *Herman* v. *Dulles*, 92 U.S. App. D.C. 303, 205 F. 2d. 713.

Petitioner relies strongly on *Mullen* v. *Canfield*, 70 App. D.C. 168, 105 F. 2d. 47, but that case is clearly without application because all that it held was that, absent specific statutory authority, the old Police Court of the District of Columbia was without authority to disbar an attorney from practice before it. The Police Court, as such, is no longer in existence. Here the Municipal Court, a court of general, though limited, jurisdiction, has full power and authority to censure, suspend or expel any attorney from practice before it for cause.[3]

The requirement of Rule 75 that an attorney desiring to practice before the Municipal Court make and subscribe

[3] 56 Stat. 196 ch. 207, D C. Code, 1951 Ed., § 11-775.

to the prescribed oath imposed no obligation upon petitioner which he did not already owe to the court. Under no theory, therefore, can it be said that petitioner has been deprived of any substantial right.

II

Petitioner has been deprived of no substantial right.

Petitioner contends that the enforcement of Municipal Court Rule 75 has the effect of debarring him from practice before that court, thus depriving him of a substantial property right without due process of law. But, as pointed out by the court below:

> "* * * There has been no debarment in any sense in which that term may be used to refer to action taken by a court to prevent an attorney from practicing. No charges have been preferred against Austin, and none are suggested. * * * He has not been refused enrollment. He has simply declined to enroll. Any time he chooses to become enrolled as a practitioner in the Municipal Court, he is perfectly free to practice there. There is no debarment in any derogatory sense. * * *"

Petitioner contends, however, that the Congress having vested in the United States District Court authority to admit to the general practice of law in the District of Columbia, the Municipal Court was without power to require as a condition to continued practice at its bar that attorneys take an oath, enroll and pay a fee of fifty cents.

While admission to the bar of the United States District Court entitled petitioner to practice therein and to engage in the general practice of the law in the District of Columbia, it did not confer on petitioner a vested right to practice in all courts in this jurisdiction without complying with their rules.

In this connection, the court below said:

> "We think Rule 75 imposes no substantive requirement for the practice of law but is instead a reasonable requirement of procedure for the efficient administration of justice. It meets a troublesome problem in the everyday conduct of the court's business. Neither the oath nor the fee is any impediment whatsoever to the enrollment of any attorney already a member of the bar. * * *"

CONCLUSION

For the foregoing reasons the respondents respectfully submit that the petition for writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit should be denied.

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